



USAID
FROM THE AMERICAN PEOPLE

Acquisition & Assistance Policy Directive (AAPD)

From the Director, Office of Acquisition & Assistance Issued: April 27, 2006

AAPD 06-05

Evaluation and Use of Contractor Performance Information

Subject Category: ACQUISITION MANAGEMENT
Type: POLICY AND PROCEDURE

AAPDs provide information of significance to all agency personnel and partners involved in the Acquisition and Assistance process. Information includes (but is not limited to): advance notification of changes in acquisition or assistance regulations; reminders; procedures; and general information. Also, AAPDs may be used to implement new requirements on short-notice, pending formal amendment of acquisition or assistance regulations.

AAPDs are EFFECTIVE AS OF THE ISSUED DATE unless otherwise noted in the guidance below; the directives remain in effect until this office issues a notice of cancellation.

This AAPD: ☐ Is New ☒ Replaces/ ☐ Amends CIB/AAPD No: CIB 99-04 and AAPDs 02-06, 02-08 and 02-18

Applicable to:

- ☒ Existing awards; ☐ Modification required
☐ No later than
☐ As noted in guidance below
- ☒ RFPs/RFAs issued on or after the effective date of this AAPD; all other Pending Awards, i.e., 8(a), sole source, IQC
- ☐ Other or N/A

Precedes change to:

- ☐ AIDAR Part(s) Appendix
☒ USAID Automated Directives System (ADS) Chapter 302
☐ Code of Federal Regulations
☐ Other
☐ No change to regulations
☒ New Provision/Clause Provided

(Signed copy on file)

Lynn H. Kopala
Acting Director

1. PURPOSE: The purpose of this AAPD is to provide consolidated guidance on the evaluation and use of contractor* performance information (CPI). We are issuing this AAPD to replace and update the agency guidance in ADS 302.5.9 and 302.5.10 plus the following CIB/AAPDs on the evaluation and use of CPI: 99-04, 02-06, 02-08, and 02-18. In addition to the prior guidance, this AAPD also establishes requirements for:

a. a 15-day response time for the initial assessor, (usually the Cognizant Technical Officer [CTO]) and reviewing official to complete their roles in the performance evaluation process (See III.1.2.4.d and III.1.2.6.d.);

b. the full utilization of the existing databases of CPI in the source-selection process and the solicitation of additional contractor performance information from business references and other sources only after the Contracting Officer (CO) finds the existing databases to be insufficient or unavailable for evaluating an offeror's performance (See III.2.4.2 and III.2.5.4.);

c. the use of the Government-wide database of Contractor Performance Reports (CPRs), the Past Performance Information Retrieval System, as the primary source of CPI (See III.2.5.1.); and

d. the use of templates 1. to provide a model for a solicitation provision for the use of CPI in source selection (See III.2.4.1.), and 2. to collect and evaluate ad hoc contractor performance information from business references and other sources during the competitive evaluation of offerors (See III.2.5.4.).

Actions Required:

a. Evaluate contractor performance annually and upon contract completion,

b. Use contractor performance information in source selection, and

c. Obtain contractor performance information through the procedures provided.

II. BACKGROUND: The Federal Acquisition Streamlining Act of 1994 mandated the Government's collection of CPI and its use in source selection. In 1998, USAID subscribed to National Institutes of Health's (NIH) Internet-based Contractor Performance System (CPS) as the means to collect and disseminate CPI on its contracts, and this system has grown to become the standard for civilian agencies. To give the agency access to CPRs compiled by DOD and NASA, in 2002, USAID enrolled in the Government-wide, Internet-based, database for CPI, the Past Performance

* Consideration of performance under assistance mechanisms is outside the scope of this directive. The next revision of ADS 303 will address the use of CPS and PPIRS in the selection of assistance recipients when contractors apply for assistance instruments.

Information Retrieval System (PPIRS), which is hosted by the Naval Sea Logistics Center, Portsmouth, NH.

III. GUIDANCE:

1. Evaluating Contractor Performance

1.1 General Considerations

1.1.1 Regular, comprehensive, and conscientious performance evaluations will provide the information to make better acquisition decisions and will be significant incentives to the contractors to provide USAID with superior products and services. On the other hand, GAO has ruled that failure to properly document contractor performance information and make it available for use in source selections for the same or similar items was sufficient basis to sustain a protest of a contract award in a subsequent source selection. (See the Additional Help, [Legal Trends and Caveats on Failure to Document Contractor Performance Information.](#))

1.1.2 COs and CTOs must regularly and collaboratively evaluate contractor performance to provide information for market research, future source selections, and other acquisition decisions.

a. [FAR](#) 36.201, 36.604, and 42.15; [AIDAR](#) 742.15, and [ADS 302](#) require performance evaluations of contracts and orders issued under indefinite quantity contracts (IQC), Federal Supply Schedule contracts, and Government-wide acquisition contracts (1) at least annually (for contracts and orders exceeding one year in duration) and (2) on completion of activities when the contracts (including all options) and orders will exceed the following dollar values*:

- | | |
|--|-----------|
| • For construction: | \$500,000 |
| • For construction, if terminated for default: | \$ 10,000 |
| • For architect-engineer services: | \$ 25,000 |
| • For other services and for commodities: | \$100,000 |

b. If individual orders do not exceed the applicable threshold, but the combined value of the orders issued under a basic contract ordering mechanism does exceed the threshold, the CO for the basic contract must make a consolidated evaluation of the contractor's performance over all the orders.

c. COs and CTOs may conduct consolidated evaluations of the contractors' performance over all the orders under basic contract ordering mechanisms, in lieu of evaluating individual orders, if the work under the orders is substantially repetitive and it would not appreciably serve the

* Pending [FAR](#) Part 36 revisions will supersede two of the reporting thresholds. The threshold for construction services will increase to \$550,000, and the threshold for architect-engineer services will increase first to \$30,000 and subsequently to \$100,000. Additionally, under pending [FAR](#) Part 36 and [FAR](#) Subpart 42.15 revisions, if a contract is terminated for default, the performance must be reported regardless of the dollar amount. M/OAA/P will issue notices when the revised thresholds are implemented.

Government's interests to distinguish between the individual orders in evaluating the contractors' performance.

d. [AIDAR](#) 742.15 and [FAR](#) 42.15 except personal service contracts and contracts awarded, under [FAR](#) 8.7, to Nonprofit Agencies Employing People Who Are Blind or Severely Disabled from the requirements for conducting these evaluations. Do not evaluate these contracts under the procedures specified in this guidance.

e. COs and CTOs may evaluate a contractor more often than the minimum periods required and may evaluate contracts not exceeding the above thresholds if they determine the evaluation to be in the best interests of the activity and of the Federal Government. Such evaluations may be appropriate when:

- sharing significant information about a contractor will promote greater confidence in future acquisition decisions,
- making information available in a more timely manner will serve the Government's interests, or
- evaluating awards below the thresholds promotes the use of small businesses or small disadvantaged businesses that are performing particularly well.

f. COs and CTOs should be conducting regular, informal dialogues with the contractors concerning their performance, providing them feedback and keeping informal records over the course of performance; so these evaluations should be neither a surprise to the contractors, nor onerous tasks.

1.1.3 COs must use CPS to compile and record Contractor Performance Reports (CPRs) of the performance evaluations, and they are primarily responsible for their content and for ensuring their timely preparation.

1.1.4 The Mandatory Reference, [Deviation No. OP-DEV-03-01c](#), authorizes COs to report CPI on construction and architect-engineer service contracts through CPS in lieu of the [FAR](#) 36.201 and 36.204(b) requirements to use forms SF 1420 and SF 1421 for these reports.

1.1.5 COs must not allow contractors to be given "downgraded" CPRs for availing themselves of their rights by filing protests and claims or for deciding not to use Alternate Disputes Resolution (ADR), nor may they allow contractors to be given more "positive" CPRs for refraining from filing protests and claims or for agreeing to use ADR. (See the Mandatory Reference, [OFPP Guidance: Protests, Claims, and Alternative Dispute Resolution \(ADR\) as Factors in Past Performance and Source Selection Decisions](#).)

1.1.6 All parties to the evaluation must observe the legal and ethical considerations in the Mandatory Reference, [Legal and Ethical Considerations in Evaluating Contractor Performance](#). In particular, USAID and other Federal agencies may use the CPRs to support future contract award decisions and the CPRs contain the designation of "Source Selection Information;" therefore the parties must handle the CPI in accordance with [FAR](#) 3.104 to prevent disclosure of the information to unauthorized parties.

1.1.7 The USAID Past Performance Coordinator conducts training in the use of CPS and PPIRS, (See the Mandatory Reference, [CPS and PPIRS Training.](#))

1.2. Procedures for the Evaluation of Contractor Performance

1.2.1 Access to CPS

a. The Head of the Contracting Office or Supervisory CO may request access to CPS for contracting office staff by e-mailing a request to the Past Performance Coordinator at ppperformance@usaid.gov. Include name, job title, Internet e-mail address (format: name@usaid.gov), office mailing address, and phone number. The Supervisory CO must also notify the Past Performance Coordinator of changes in staff duties and/or employment status when CPS access is no longer required for staff members.

b. In cases where Personal Service Contractor (PSC) staff in the contracting office requires CPS access, NIH requires that the PSC must sign (signature required) and submit a NIH-prescribed nondisclosure agreement (See the Mandatory Reference, [AID Form 302-1, Nondisclosure Agreement for USAID Personal Services Contractors.](#)) to the Past Performance Coordinator. Submit the form by fax to (202) 216-3143 or e-mail an image file to ppperformance@usaid.gov. File the form in the PSC contract folder after submission. The Supervisory CO must also notify the Past Performance Coordinator of PSC contract term extensions to maintain this access beyond the expiration date listed on the form.

c. If a CTO has not been previously authorized CPS access, the CO authorizes CTO access to CPS for the limited purpose of providing the initial assessment of performance, using the Register User tab after logging into CPS. (Access rights for CTOs do not permit searches of the database.)

1.2.2 The CO begins the CPR by identifying the contracts and task orders that are due for interim and final performance evaluations.

1.2.3 Accessing CPS, the CO must select the appropriate report module, complete the contract identification information, and assign the CPR to him/her self, a CO's Designee in the contracting office, or to the CTO (known as Project Officer or COTR in CPS). More detailed explanations of the procedures are listed in the CPS user manuals on NIH's [CPS Homepage](#).

1.2.4 Initial Assessment

a. Under the preferred procedure, the CO assigns the CPR to the CTO (specified as Project Officer in CPS), who then accesses the assignment in CPS and provides an initial assessment of performance from the program office's perspective by addressing the following data fields:

- Quality of Product or Service,
- Cost Control,
- Timeliness of Performance,
- Business Relations,
- Subcontracts,
- Contractor Key personnel, and
- Customer Satisfaction.

b. The initial assessor may prepare his/her comments for each field (maximum 2,000 characters per field) in a word processing system, run the spelling and grammar checks, and then paste the comments into the respective CPS data fields. (CPS does not contain spelling and grammar check tools.)

c. To maintain his/her credibility and, consequently, the eventual utility of the CPR for the procurement decision-making processes, the initial assessor must compose authoritative, well-written narratives for the above data fields that effectively support the ratings specified: stating that "deliverables were generally on time" does not effectively support a rating of "Excellent" for the Timeliness of Performance criterion. He/She must bear in mind that the Government-wide audience for the evaluation will not be limited to his/her discipline; he/she must explain his/her assessment in general, non-technical terms as much as possible and include an explanation of all agency acronyms and jargon used. The construction of the assessment must convey that it will be the official Government evaluation of the contractor's performance, not an expression of personal opinion: he/she must not use personal pronouns or otherwise qualify it as a personal opinion.

d. The initial assessor must submit his/her assessment to the CO within 15 calendar days of receiving the assignment, unless the CO concurs in an extension of the time period.

1.2.5 The CO must supplement or revise the initial assessor's assessment as appropriate to his/her responsibility for the content of the CPR; and he/she addresses the contractor's compliance with small business and small disadvantaged business subcontracting goals and requirements (which the initial assessor does not assess).

1.2.6 The CO then mails or makes the CPR available to the contractor through CPS for review and comment. The CO must allow the contractor at least 30 calendar days to provide comments, rebutting statements, or additional information (Ref: [FAR](#) 42.1503); and he/she has the discretion to allow the contractor additional time.

a. If the CO makes the CPR available to the contractor through CPS and the contractor fails to submit comments in the allotted time period, CPS automatically completes the CPR and makes it available online for use in source selections.

b. If the CO makes the CPR available to the contractor offline, he/she must manually complete it in CPS if the contractor does not respond in the allotted comment period, and then he/she furnishes a copy of the CPR, marked completed, to the contractor.

c. If the contractor responds timely, the CO must consider the contractor comments (and incorporate them into CPS if they are submitted offline) and revise the Government ratings and comments as he/she deems appropriate in light of the contractor input.

d. If the contractor submits a response that results in a disagreement between the contractor and the CO, the CO must refer the matter to a higher level (normally the CO's immediate supervisor) for resolution. This reviewing official must review the case and render a decision in writing to the CO within 15 calendar days of receipt of the contractor's response. This decision is final. The CO then revises the final ratings and

comments, as necessary, in accordance with the reviewing official's decision.

e. The CO offers the contractor the opportunity to revise or withdraw its comments if revisions to the CPR, pursuant to (3) or (4) above, render the comments moot or inappropriate (and incorporates any revised comments into CPS if they are submitted offline).

1.2.7 The CO then 1. manually completes the CPR in CPS, 2. furnishes a copy of it that is marked completed to the contractor if the comments were submitted offline (If the contractor comments were provided through CPS, the system makes the CPR available to the contractor upon completion.), and 3. prints a copy of the CPR and files it and any reviewer's decision, with all attachments, in the contract administration folder.

1.2.8 CPS makes the completed CPR immediately available for use by COs in civilian agencies, and it transmits the CPR to PPIRS, where it will be posted for Government-wide use, within one week.

1.2.9 CPS and PPIRS maintain the completed CPR online for use in source selections and other acquisition decisions, and they archive it offline according to the following schedule:

- Construction and architect-engineer services: six years after the date of the report, and
- Other services and commodities: three years after contract completion.

2. Using Contractor Performance Information in Source Selection

2.1 General Considerations.

2.2.1 Unless the CO documents the basis for not doing so in the contract file, he/she must consider CPI, by following the directives and procedures specified below, for the following purposes when selecting an offeror to receive a contract award.

- Determining that the offeror has a satisfactory performance record in order to make a positive determination that the offeror is responsible and therefore eligible to receive the award, and
- Evaluating the offeror's performance to make a comparative evaluation of it as an indicator of how well the offeror is likely to perform the contract when CPI is an evaluation factor for making a competitive award.

2.2.2 The CO must not allow an offeror's performance evaluation to be "downgraded" for availing itself of its rights by filing protests and claims or for deciding not to use Alternate Disputes Resolution (ADR), nor may the CO allow the offeror to be given a more "positive" performance evaluation for refraining from filing protests and claims or for agreeing to use ADR. (See the Mandatory Reference, [OFPP Guidance: Protests, Claims, and Alternative Dispute Resolution \(ADR\) as Factors in Past Performance and Source Selection Decisions.](#))

2.2.3 All parties to the source selection must observe the legal and ethical considerations in the Mandatory Reference, [Legal and Ethical Considerations in Evaluating Contractor Performance](#). In particular, the CPRs contain the designation "Source Selection Information," and the parties must handle the CPI in accordance with [FAR](#) 3.104 to prohibit disclosure of the information to unauthorized parties.

2.2.4 The USAID Past Performance Coordinator conducts training in the use of CPS and PPIRS. (See the Mandatory Reference, [CPS and PPIRS Training](#).)

2.3 CPI in Determining Responsibility

The CO uses the CPI in accordance with [FAR](#) 9.1.

2.4 CPI as a Comparative Evaluation Factor

2.4.1 When CPI is used as a comparative evaluation factor for source selection purposes, the CO must base the solicitation provision on the model contained in the Mandatory Reference, [Solicitation Template for Contractor Performance Information](#), adapting it to the circumstances of the subject procurement, but being sure to include the elements required by [FAR](#) 15.305(a)(2). The solicitation provision must also contain the sub factor for the evaluation of performance in using small business concerns substantially as stated in the template except for solicitations for personal services contracts and for 100 per cent small business set asides and those for which a justification for other than full and open competition has been approved.

2.4.2 The CO must not request that an offeror solicit evaluations of its performance from its customers as a condition for submitting a proposal. (He/she requests only contact information for the offeror's customers so that Government personnel may solicit information to conduct these evaluations when existing databases of CPI are found to be insufficient or unavailable.)

2.4.3 The CO must give the comparative evaluation factor for CPI sufficient weight in the source selection process to make it a significant element in distinguishing between the offerors. The sub factor for evaluation of the performance of offerors in using small business concerns may not be given a weight which makes it the single lowest-weighted non-cost/price factor or sub factor.

2.4.4 The procurement official (the CO or the person on the technical evaluation committee designated by the CO to obtain the information) provides the CPI obtained under the provisions of 2.5. below to the technical evaluation committee, who then evaluates it in accordance with the terms of the solicitation, [FAR](#) 15.304(c)(3) and 15.305(a)(2), [AIDAR](#) 715.303-70 and 715.305, and this AAPD. The committee must evaluate the CPI for each offeror against the solicitation's Section M provisions, using reasonable business judgment to determine the relevancy of the CPI as a predictor of the offeror's anticipated performance of the subject contract requirement. (See the Additional Help, [Legal Trends and Caveats on the Relevancy of Past Performance](#).)

2.4.5 In the case of a joint venture, each partner's performance record must be reviewed. Follow-up with reference contacts concerning the partners' individual performance is recommended.

2.5 Obtaining CPI

2.5.1 The procurement official must attempt to obtain CPI for an offeror's contracts by searching the Government-wide Past Performance Information Retrieval System (PPIRS) when available. (See the Mandatory Reference, [Past Performance Information Retrieval System User Guide](#).)

2.5.2 If PPIRS is available and the procurement official does not have access to it, he/she must request an account, and the USAID Past Performance Coordinator will grant access so that he/she may search the database. (See the Mandatory Reference, [A&A Solutions Center \(for PPIRS\)](#) for the detailed instructions for applying for a PPIRS account.)

2.5.3 PPIRS does not contain all the CPRs posted in CPS: It does not contain CPRs:

- in which the DUNS number was not included when, prior to April 15, 2002, this field was optional under CPS,
- for some Non-U.S. contractors for which it does not have access to the DUNS number record, which it requires for an edit check,
- for contractors that have been exempted from registration in Central Contractor Registration under either [FAR](#) 4.1102(a) or a [FAR](#) deviation,
- which are completed after the weekly transfer of CPRs to PPIRS, i.e., there may be as much as a one week delay in posting the completed CPRs from CPS to PPIRS, and
- which have not yet been completed in CPS, where it, but not PPIRS, contains contact information for the individuals charged with preparing the CPRs that are currently in progress. (The procurement official may contact these individuals concerning an offeror's performance and evaluate it as provided in III.2.5.4.)

If PPIRS does not contain sufficient data to evaluate an offeror's performance, CPS is the secondary source for obtaining CPI on an offeror's civilian-agency contracts. However, NIH does not allow program office staff on the technical evaluation committee access to CPS for this purpose, so the CO must designate a contract specialist to conduct the CPS search.

2.5.4 If the CO determines that the above CPI databases do not contain sufficient data for the purposes in III.2.3 and III.2.4 above or are unavailable, the procurement official should ordinarily ask the business references named in the offeror's proposal, as well as others who may be known to have relevant information, to address the offeror's performance. "Others" includes the members of the technical evaluation committee who have direct, personal knowledge of the offeror's performance.

The CO determines how many business references must be contacted in order to adequately address the offeror's performance. The procurement official uses

the rating criteria and evaluation areas or data elements contained in the CPS report templates to collect and evaluate the reference information (Download the templates at: [CPS Standard Report](#) and [CPS Construction Report](#). A [CPS Architect-Engineer Report](#) is scheduled to be available by October 2006: Access it from [CPS Homepage](#)).

2.5.5 If the CPI contains adverse information on which the offeror has not previously been given an opportunity to comment, the procurement official must provide the offeror an opportunity to comment on it prior to consideration of the CPI in the evaluation, and any offeror comment must be considered with the adverse CPI. (CPS and the other collection systems in use give the offeror an opportunity to comment in the preparation of the completed CPRs that are maintained in PPIRS and CPS, and they post such comments in the CPRs. The procurement official reviewing the CPRs may rely on the statement that "The contractor has elected not to comment." in the completed CPRs for the purpose of having given the offeror a "previous opportunity to respond" to adverse past performance information within the meaning of [FAR](#) 15.306.)

2.5.6 The CO retains the documented CPI in the contract file as part of the source selection and responsibility determination documentation.

3. MANDATORY REFERENCES

3.1 External Mandatory References

- a. [FAR](#)
 - (1) 3.104
 - (2) 4.1102(a)
 - (3) 15.3
 - (4) 36.201
 - (5) 36.604
 - (6) 42.15
- b. [CPS Homepage](#)
 - (1) [CO User's Manual](#)
 - (2) [CO Designee \(COD\) User's Manual](#)
 - (3) [PO/COTR User's Manual](#) (for use by CTOs)
 - (4) [Contractor User's Manual](#)
 - (5) [CPS Standard Report](#) (Template for Non-Construction Contracts)
 - (6) [CPS Construction Report](#) (Template)
- c. [Past Performance Information Retrieval System User Guide](#)
- d. [OFPP Guidance: Protests, Claims, and Alternative Dispute Resolution \(ADR\) as Factors in Past Performance and Source Selection Decisions](#)
- e. Civilian Agency Acquisition Council Letter 2001-03, Oct. 17, 2001, Advance Consultation: Class Deviation from [FAR](#) 36.201, 36.604(b), 53.236-1(b), and 53.236-2(d) when using the National Institutes of Health (NIH) Contractor Performance System (CPS)
(PDF file Embedded on Pg 13)

3.2. Internal Mandatory References

- a. [AIDAR](#)
 - (1) 715.3
 - (2) 742.15
 - b. [AID Form 302-1, Nondisclosure Agreement for USAID Personal Services Contractors](#)
 - c. [A&A Solutions Center--eGov](#)
 - (1) [CPS](#)
 - (2) [PPIRS](#)
 - (3) [CPS and PPIRS Training](#)
 - d. [Deviation No. OP-DEV-03-01c, Approval of Class Deviation from FAR Requirements for SF 1420 and SF 1421](#) (Attached on Pg 12)
 - e. [Legal and Ethical Considerations in Evaluating Contractor Performance](#)
 - f. [Solicitation Template for Contractor Performance Information](#) (Attached on Pg 14)
4. ADDITIONAL HELP
- a. [Legal Trends and Caveats on Failure to Document Contractor Performance Information](#) (Attached on Pg 18)
 - b. [Legal Trends and Caveats on the Relevancy of Past Performance](#) (Attached on Pg 19)
 - c. [PPI Relevancy](#) (Attached on Pg 20)
 - d. [Contractor Performance References](#)
 - f. [OFPP Guide: Best Practices for Collecting and Using Current and Past Performance information, May 2000](#)
 - g. [DOD Guide: A Guide to Collection and Use of Past Performance Information \(Version 3\), May 2003](#)

IV. POINTS OF CONTACT: USAID COs may direct their questions about this AAPD to Kenneth Monsess, M/OAA/P, Phone: (202) 712-24913, E-mail: kmonsess@usaid.gov. Direct questions concerning access to and the functioning of CPS and PPIRS to the USAID Past Performance Coordinator at ppperformance@usaid.gov.

Contractors and prospective offerors for contract awards must direct their questions to the appropriate CO for the award.

Mandatory Reference:

Deviation No. OP-DEV-03-01c, Approval of Class Deviation from FAR Requirements for SF 1420 and SF 1421

ACTION MEMORANDUM FOR THE DIRECTOR, M/OP

November 15, 2002

TO: M/OP, Timothy T. Beans

FROM: M/OP/POL, Raquel C. Powell /s/

SUBJECT: Deviation No. OP-DEV-03-01c, Approval of Class Deviation from FAR Requirements for SF 1420 and SF 1421

Issue: Approval is sought for a USAID-wide class deviation from FAR 36.201, 36.604(b), 53.236-1(b), and 53.236-2(d) to use the NIH Contractor Performance System (CPS) in lieu of SF 1420, Performance Evaluation (Construction), and SF 1421, Performance Evaluation (Architect-Engineer).

Discussion: FAR 36.201 and 53.236-1(b) require the use of the former form when evaluating a contractor's performance under a construction contract. Additionally, FAR 36.604(b) and 53.236-2(d) require the use of the latter form when evaluating a contractor's performance under an architect-engineer contract. However, as described in AIDAR 742.1503 and ADS 302, the USAID Office of Procurement has subscribed to the NIH CPS, an interagency system for preparing and disseminating contractor performance reports over a secure Internet connection. Rather than requiring preparation of duplicative evaluations on construction and architect-engineer contracts, evaluation of contractor performance under only NIH CPS will better serve the agency's purposes because this system captures all of the data elements required by the two forms, and it offers several additional advantages in its online preparation and dissemination of reports on contractor performance.

The advance consultation with the CAAC chairperson that is prescribed in FAR 1.404(a)(1) is evidenced in the attached memo. No other clearances are deemed necessary or appropriate.

Recommendation: We recommend that you approve the proposed USAID-wide class deviation for a period extending until such time as the subject of this deviation is included in a future FAR change.

Action:

Approve: /s/ Timothy T. Beans

Disapprove: _____

Date November 22, 2002

Attachment: Civilian Agency Acquisition Council Letter 2001-03

External Mandatory Reference:

Civilian Agency Acquisition Council Letter 2001-03, Oct. 17, 2001,
Advance Consultation: Class Deviation from FAR 36.201, 36.604(b),
53.236-1(b), and 53.236-2(d) when using the National Institutes of
Health (NIH) Contractor Performance System (CPS)



Mandatory Reference:

Solicitation Template for Contractor Performance Information

SECTION L, Instructions, Conditions, and Notices to Offerors or Respondents:

(XXX) **CONTRACTOR PERFORMANCE INFORMATION** [See Section M. XXX.]

(a) The offeror (including all partners of a joint venture) must provide performance information for itself and each major subcontractor (One whose proposed cost exceeds __%. [CO must insert percentage.]) of the offeror's total proposed cost) in accordance with the following:

1. List in an annex to the technical proposal up to __ (CO to insert a reasonable number) of the most recent and relevant contracts for efforts similar to the work in the subject proposal. The most relevant indicators of performance are contracts of similar _____

[CO must define relevancy based on input from the program office (e.g., contract types, type of work, scope of work, complexity/diversity of tasks, skills/ expertise required, etc.) and the currency of the performance.

2. Provide for each of the contracts listed above a list of contact names, job titles, mailing addresses, phone numbers, e-mail addresses, and a description of the performance to include:

- Scope of work or complexity/diversity of tasks,
- Primary location(s) of work,
- Term of performance,
- Skills/expertise required,
- Dollar value, and
- Contract type, i.e., fixed-price, cost reimbursement, etc

(USAID recommends that you alert the contacts that their names have been submitted and that they are authorized to provide performance information concerning the listed contracts if and when USAID requests it)

(b) If extraordinary problems impacted any of the referenced contracts, provide a short explanation and the corrective action taken*.

(c) Describe any quality awards or certifications that indicate exceptional capacity to provide the service or product described in the statement of work. This information is not included in the page limitation.

(d) Performance in Using Small Business (SB) Concerns (as defined in FAR 19.001)**.

* Required by FAR 15.305(a) (2)

** Required for all USAID solicitations other than personal services contracts, 100 per cent small business set asides, and those for which a justification for other than full and open competition has been approved

(1) This section (d) is not applicable to offers from small business concerns.

(2) As part of the evaluation of performance in Section M.XXX of this solicitation, USAID will evaluate the extent you used and promoted the use of small business concerns under current and prior contracts. The evaluation will assess the extent small business concerns participated in these contracts relative to the size/value of the contracts, the complexity and variety of the work small business concerns performed, and compliance with your SB subcontracting plan or other similar small business incentive programs set out in your contract(s).

(3) In order for USAID to fully and fairly evaluate performance in this area, all offerors who are not small business concerns must do the following:

(A) Provide a narrative summary of your organization's use of small business concerns over the past three years. Describe how you actually use small businesses--as subcontractors, as joint venture partners, through other teaming arrangements, etc. Explain the nature of the work small businesses performed--substantive technical professional services, administrative support, logistics support, etc. Describe the extent of your compliance with your SB subcontracting plan(s) or other similar SB incentive programs set out in your contract(s) and explain any mitigating circumstances if goals were not achieved.

(B) To supplement the narrative summary in (A), provide with your summary a copy of the most recent SF 294 "Subcontracting Report for Individual Contracts" for each contract against which you were required to report for the past __ [CO to insert number] years. [CO should be mindful of the time period requested because the number of reports could be significant over an extended period of time.]

(C) Provide the names and addresses of three SB concerns for us to contact for their assessment of your performance in using SB concerns. Provide a brief summary of the type of work each SB concern provided to your organization, and the name of a contact person, his/her title, phone number, and e-mail address for each.

[End of Section L provision]

SECTION M, Evaluation Factors for Award:

(XXX) CONTRACTOR PERFORMANCE INFORMATION __ (CO to insert number of points, if using a point scoring system. See FAR 15.305(a)(2) for required elements of the provision.) [See Section L.XXX.]

(a) Performance information will be used for both the responsibility determination and best value decision. USAID may use performance information obtained from other than the sources identified by the offeror/subcontractor. USAID will utilize existing databases of contractor performance information and solicit additional information from the references provided in Section L. XXX (CO must insert subsection number) of this RFP and from other sources if and when the Contracting

Officer finds the existing databases to be insufficient for evaluating an offeror's performance.

(b) If the performance information contains negative information on which the offeror has not previously been given an opportunity to comment, USAID will provide the offeror an opportunity to comment on it prior to its consideration in the evaluation, and any offeror comment will be considered with the negative performance information.

(c) USAID will initially determine the relevance of similar performance information as a predictor of probable performance under the subject requirement. USAID may give more weight to performance information that is considered more relevant and/or more current.

(d) The contractor performance information determined to be relevant will be evaluated in accordance with the elements below:

(1) Quality of product or service, including consistency in meeting goals and targets: XX

(2) Cost control, including forecasting costs as well as accuracy in financial reporting: XX

(3) Timeliness of performance, including adherence to contract schedules and other time-sensitive project conditions, and effectiveness of home and field office management to make prompt decisions and ensure efficient completion of tasks: XX

(4) Business relations, addressing the history of professional behavior and overall business-like concern for the interests of the customer, including coordination among subcontractors and developing country partners, cooperative attitude in remedying problems, and timely completion of all administrative requirements: XX

(5) Customer satisfaction with performance, including end user or beneficiary wherever possible: XX

(6) Effectiveness of key personnel, including appropriateness of personnel for the job and prompt and satisfactory changes in personnel when problems with clients were identified: XX

(7) Prime offerors who are not small business concerns will be evaluated on their performance in using small business concerns as subcontractors, joint venturers, and in other teaming arrangements: XX

Total Weight for Performance Evaluation XX

(f) In cases where 1. an offeror lacks relevant performance history, 2. information on performance is not available, or 3. an offeror is a member of a class of offerors where there is provision not to rate the class against a sub factor, then the offeror will not be evaluated favorably or unfavorably on performance. The "neutral" rating assigned to any offeror lacking relevant performance history is a score commensurate with the percentage of points received vs. possible points*. An exception to this neutral rating provision: the non-small businesses prime with no history of subcontracting with small business concerns. Prior to assigning a "neutral" past performance rating, the contracting officer may take into account a broad range of information related to an offeror's performance.

[End of Section M provision]

* For example, a small business prime offeror will not be evaluated on its performance in using small business concerns. If this sub factor is worth a possible 10 points out of a total possible point value of 100 for the technical proposal, then the small business prime offeror's technical proposal will have a maximum of 90 possible points. If it was assigned a score of 80 points out of the 90 maximum possible points, its technical score for evaluation against the other offerors would be 88.89 (i.e., 80/90). USAID understands that there may be minor arithmetic differences in percentage terms as a result; however, it considers these differences to be minor and that they will not impact any best-value decision made under this solicitation.

Additional Help:

Legal Trends and Caveats on Failure to Document Contractor Performance Information

GAO has ruled that an agency's failure to document contractor performance and to provide it for use in source selection is sufficient basis to sustain a protest against the agency's contract award for the same services. It is reasonable to assume that this decision is applicable to procurements of similar services, rather than strictly the same service, and to procurements of commodities when similar commodities have been previously procured, to the same end.

1997 WL 113958 (Comp.Gen.), B- 275,554, 97-1 CPD P 114

COMPTROLLER GENERAL

*1 Matter of: International Business Systems, Inc.
March 3, 1997

Robert E. Cohen, Esq., Robert E. Cohen & Associates, for the protester.
Amer M. Syed, Esq., for Dulles Networking Associates Inc., the intervenor.
Dennis Foley, Esq., and Philip Kauffman, Esq., Department of Veterans Affairs, for the agency.

Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest alleging that agency's evaluation of past performance was unreasonable is sustained where the technical evaluation scheme envisioned a price/past performance tradeoff among technically acceptable proposals to determine the best value to the government, and where the agency failed to consider the past performance of the protester on a contract involving the same agency, the same services, and the same contracting officer because an individual in the agency did not complete and return the past performance evaluation materials.

Additional Help:

Legal Trends and Caveats on the Relevancy of Past Performance

In recent years, GAO has considered and sustained challenges to agencies' evaluation of contractor performance information that was not relevant to the RFP at issue.

□ Si Nor, Inc., B-292748.2, 2004 CPD ¶10, the GAO held that the awarding agency erred in considering relevant one of the awardee's prior contracts. The RFP stated that only information on contracts "similar in size, scope, and complexity" to the work to be awarded would be evaluated. GAO found that the contract at issue was "substantially less than the dollar value of the requirements of the RFP" and relevant only to a limited portion of the solicited work. Similarly,

□ Continental RPVs, B-292768, 2004 CPD ¶56, the GAO found unreasonable the agency's past performance evaluation of the awardee because it was based upon prior contracts which were not similar to several of the essential RFP work requirements and the dollar value of the largest contract was less than three percent of the contract value contemplated under the RFP, when the solicitation required the submission of information on contracts that were "same or similar" to the effort required by the RFP.

□ KMR, LLC, B-292860, 2003 CPD ¶233, the GAO held that where the RFP called for "same or similar" contracts, "a firm's success in performing complex IT tasks does not necessarily indicate that it can successfully perform the contract here involving significantly different tasks and skills, even if they involve less sophisticated skills."

CONTRACT REVIEW BOARD FINDINGS ON PAST PERFORMANCE:

□ The CRB has been requesting technical evaluation committees to revise memoranda to detail precisely what past performance was checked. Gone are the days when TECs can summarily conclude that past performance was "good" without explaining the bases for their conclusions.

Additional Help:

PPI Relevancy

Excerpted from: [DOD Guide: A Guide to Collection and Use of Past Performance Information \(Version 3\), May 2003](#)

Source selection officials have broad discretion to determine which PPI (Past Performance Information) to consider relevant for an individual procurement. Relevancy is a **threshold** question when considering past performance, not a separate element of past performance. Relevancy, as defined in *Appendix A (see below in lieu of Appendix)**, should not be described as a subfactor.

Irrelevant past performance must not form the basis of a performance risk evaluation. PPI with applicable but limited relevance may be used for evaluation but should be given less weight.

The source selection team may consider data available from any source. One source is PPIRS, which provides access to a central data repository containing PPI from all of the DoD Services and other federal Agencies. The team should also attempt to obtain information from references cited by offerors in their proposals. Upon receipt of proposals, the team must determine which of the offerors' past contract efforts relate closely to the solicitation requirements. The evaluation group should screen the information provided for each of the referenced contracts to make an initial determination of its relevancy to the current requirement. However, the source selection authority may make an independent relevancy determination.

Source selection officials should use the most relevant, recent PPI available in making the source selection decisions. They must consider updated information by the contractor regarding relevant PPI.

Some aspects of relevancy include the type of effort (e.g., development, production, repair) and the business sector. The objective of the screening is to remove from consideration those contract references that are clearly *unrelated* to the type of effort sought. Other members of the source selection team may be consulted as necessary for assistance in determining relevancy.

In some cases, previous contracts as a whole may be similar to the current contract, while in others only portions of previous contracts may be relevant. One example of focusing on only a

an evaluation of a requirement calling for portion of a previous contract is for the evaluation of the contractor's management, planning, and scheduling of subcontractors on subcontract management skills.

The evaluation group should consider the most recent data available. A **best practice** is to select similar efforts that are either still in progress or just completed and that have at least one year of performance history. While the actual cut-off time should be determined by the Contracting Officer on a case-by-case basis, the currency of the information requested should be determined by the commodity or service and the specific circumstances of the acquisition.

The Comptroller General recommends the use of solicitation language that evokes the phrase "for the same or similar items," which may ensure that the Government does not overly restrict its ability to consider an array of information.

PPI relating to the recent or ongoing production of a transport aircraft, for example, would be relevant for the source selection for production of a new transport aircraft of similar range or payload. When considering the relevance of PPI to be used in making a source selection decision, similarities in the following should be considered:

- ☐ Location of the work to be performed
- ☐ Nature of the business area(s) involved
- ☐ Required levels of technology
- ☐ Contract types
- ☐ Materials and production processes
- ☐ Type of work (product/service)
- ☐ Scope of work or complexity/diversity of tasks

- ☐ Skills required to provide the service

One specific relevancy issue that should always be clearly articulated in the solicitation is relevancy of the proposed performance

location. When procuring commodities, the PPI for work performed at the proposed performance location will be considered relevant for assessing the performance risk for the work to be performed. Mergers and acquisitions should be considered when determining what information may be considered relevant. Past performance evaluations are typically conducted only for the specific site where work is proposed for future performance. Performance within companies may vary widely from site to site or specific address. When evaluating the

* **Relevant (Relevancy).** Information that has a logical connection with the matter under consideration.

performance of services or commercial items, however, corporate past performance may be a consideration. The PPI criteria should be tailored in the solicitation to clarify whether evaluating global corporate capability really evaluates company experience instead of past performance. If more than one site is proposed for performance, each site should be evaluated for the type of effort proposed for performance at that site. The DUNS+4 is a good way to distinguish between contractor segments when searching PPI.

Relevancy versus Experience

To a slight degree, experience is inherent in the relevancy determination of a past performance evaluation. Relevancy in general is a threshold determination, not a quantitative analysis. Experience is a comparative analysis when an offeror may get additional credit for breadth or depth of the experience.

....

Evaluating Contractors with No Relevant Past Performance

In most cases the evaluation group will find some related government or other public or private PPI for each contractor and subcontractor. Such information will usually

surface if the evaluation approach allows a broad interpretation of relevancy or takes into account information regarding the past performance of predecessor companies, key personnel who have relevant experience, or subcontractors that will perform key aspects of the requirement. This flexibility will take on increasing importance as the Department modernizes through the use of commercial items.

Occasionally, however, an evaluation group may not find any relevant information. In this case, an offeror's lack of past performance must be treated as an unknown performance risk, having no positive or negative evaluation significance. This allows the Government to evaluate past performance in a fair manner. The method and criteria for evaluating offerors with no relevant PPI should be constructed for each specific acquisition to *ensure that such offerors are not evaluated favorably or unfavorably on past performance*.

The solicitation must clearly describe the approach that will be used for evaluating offerors with no relevant performance history. Solicitations should encourage offerors to identify PPI that may be judged related or relevant to the specific acquisition.